

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W., Room 1225
Washington D.C. 20001

FILED

JUN 17 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

IN THE MATTER OF:

Mark G. Wonders
1177 Mose Ware Road
Ozark, AL 36360
(334) 774-0736
Complainant,

vs.


John McHugh,
Secretary,

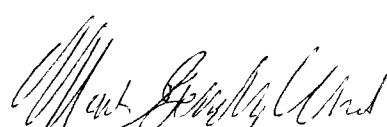
Department of the Army,
Agency

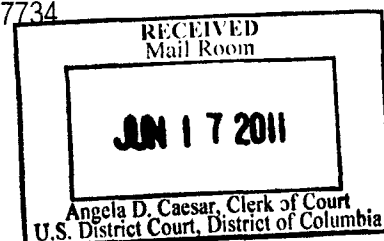
Case: 1:11-cv-01130
Assigned To : Wilkins, Robert L.
Assign. Date : 6/17/2011
Description: FOIA/Privacy Act

COMPLAINANT

On February 17, 2011, February 24, 2011, February 25, 2011, and May 14, 2011, respectively, I, the Complainant, made several ethics charges against former Fort Rucker (Alabama) Labor Relations Attorney Heather Pepin in which I alleged several serious ethics violations taken directly against me. I was informed by the Department of the Army that they have completed its investigations into these complaints; however, after several Freedom of Information (FOIA) requests to collect this information directly relating to me, I was refused. A May 23, 2011, letter from Mr. Ronald Buchholz, Associate Deputy General Counsel, Department of the Army, Office of the General Counsel, issued a final denial of this information. Ms. Pepin's actions have directly impacted my health, family, and financial wellbeing. I am requesting the court compel the release of any and all information directly relating to the above-mentioned complaints, including notes, complete investigative reports and findings, along with any and all related correspondence to me in the interest of justice.


15 June 2011


Mark Geraghty Wonders
1177 Mose Ware Road
Ozark, AL 36360
Phone: (334) 774-0736/Cell: (334) 379-7734
E-mail: wondersm@hotmail.com





DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-2104

May 23, 2011

Mr. Mark Geraghty Wonders
1177 Mose Ware Road
Ozark, AL 36360

Dear Mr. Wonders:

This letter responds to your Freedom of Information Act (FOIA) appeal, dated April 8, 2011. You appealed the Office of The Judge Advocate General's (OTJAG) response to your initial request, dated March 28, 2011, which sought "any and all documents generated by [your] 17 February and 24 February 2011 charges of professional misconduct made against Ms. Heather Pepin of the Fort Rucker Staff Judge Advocate Office."

We apologize for the delayed response to this appeal. The Army must address a large volume of FOIA demands and cannot always respond to appeals as quickly as we would like. We make it our practice to respond to appeals in the order received. The courts have sanctioned this method of handling FOIA cases. *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 614-16 (D.C. Cir. 1976).

OTJAG informed you on March 23, 2011 that it had completed its review of the allegations you made against Ms. Pepin. However, OTJAG stated that it was prohibited from disclosing results of that review to you. You subsequently made a FOIA request for the records resulting from that review, which OTJAG denied on March 30, 2011. This office has reviewed your appeal and we have determined that OTJAG properly withheld the results of its review. Accordingly, your appeal is denied.

OTJAG Professional Responsibility records are sensitive and raise significant privacy concerns for the subjects of those records. OTJAG informed you that it reviewed your allegations completely, but that it could not disclose the results of that review in order to protect the Ms. Pepin's privacy. Your appeal states that your interest in knowing the results outweighs Ms. Pepin's interests in having them remain private.

Although we are cognizant of your interest in this information, your interest must be balanced against Ms. Pepin's privacy interests. The FOIA provides the proper balance by stating that individuals' privacy interests should be weighed against the public's interest in disclosure. The public's interest in disclosure is limited to information that "sheds light on an agency's performance of its statutory duties." *Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 775 (1989).

Your appeal has not demonstrated a public interest in disclosure. Rather, you've stated that this information is relevant to you in a personal sense. Thus, with no

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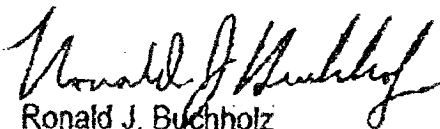
Received Time May 31, 2011 6:17PM No. 6944

Received Time Jun. 15, 2011 10:10AM No. 7074

demonstrated public interest in this information, Ms. Pepin's privacy interests outweigh. Accordingly, OTJAG properly refused to disclose the results of its review to you.

This letter constitutes final action on behalf of the General Counsel, who has been designated by the Secretary of the Army to consider appeals under the FOIA. You may, if you desire, seek judicial review of this determination in accordance with the provisions of the FOIA, 5 U.S.C. 552(a)(4)(B).

Sincerely,


Ronald J. Buchholz
Associate Deputy General Counsel

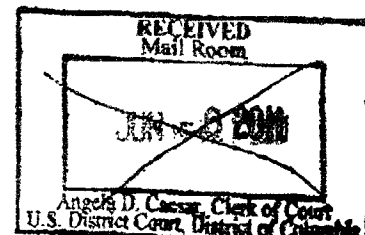
Mark Wonders
1177 Mose Warc Road
Ozark, AL 36360
(334) 774-0736
wondersm@hotmail.com

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Washington DC 20001
(202) 354-3000
<http://www.dcd.uscourts.gov>

1 June 2011

SUBJECT: Request for Judicial Review of Withheld Information Under 5 United States Code 552(a)(4)(B) (WONDERS, Mark G. v. Labor Relations Attorney Heather Pepin)

1. On February 17, 2011, and February 24, 2011, respectively, I filed ethics charges against former Fort Rucker (Alabama) Labor Relations Attorney Heather Pepin with regard to several direct actions she took against me while assigned there. On March 23, 2011, the Department of the Army Office of the Judge Advocate General (OTJAG) completed its investigation of Ms. Pepin, who has since been reassigned to Fort Campbell (Kentucky).
2. On April 8, 2011, I submitted a Freedom of Information (FOIA) request seeking any and all documents generated by my February charges of professional misconduct made by Ms. Pepin against me. However, on May 23, 2011, I received a Final Action letter by Associate Deputy General Counsel Ronal Buchholz of the Department of the Army Office of the General Counsel denying my request.
3. I have made it clear to the Army that her unjustified and unethical actions have directly caused pain and suffering to myself and my family, and receiving this information to verify my position is essential to prevention of further actions against me by Fort Rucker officials.
4. Under 5 U.S.C. 552(a)(4)(B), it reads that "On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B)." Under this law, I am respectfully requesting the district court conduct a de novo review of my request for the Army's investigation into my complaints, and that they be released to me.



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5. I can make myself available at any time to answer any and all questions in this matter, and will supply, upon request, any and all documents and evidence in my possession to complete this request. I can be reached by mail, e-mail, or by my home and cell phone numbers listed above. This request has been sent via USPS Certified mail (7010 2780 0001 0041 5673).

Respectfully,



MARK GERAGHTY WONDERS

Enclosure:

May 23, 2011, Department of the Army
Office of the General Counsel letter
from Associate Deputy General Counsel
Ronald J. Buchholz